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ute there enacted is constitutional. *Neas v. Borches*, 71 S. W. 50; *McDaniels v. J. J. Connelly Shoe Company*, 71 Pa. 37, 60 L. R. A. 947. The statute in Washington is very similar to that now before us. See, also, *Hart v. Roney*, 93 Md. 432, 49 Atl. 661, and *Fisher v. Herrman*, 95 N. Y. 392, in which the courts of Maryland and Wisconsin seem to assume the constitutionality of their local statutes on this subject, which are somewhat less restrictive than that of Massachusetts."

See, *ante*, pp. 632, 682, 750.

PARENT AND CHILD—PERSONAL INJURIES TO MINOR CHILD—RIGHT TO DAMAGES.—A minor child cannot recover from its father and stepmother civil damages for personal injuries inflicted upon it by the latter. *McKelery v. McKelery* (Tenn.), 77 S. E. 664.

Per Beard, C. J.:

"This is a suit instituted by a minor child, by next friend, against her father and stepmother, seeking to recover damages for cruel and inhuman treatment alleged to have been inflicted upon her by the latter at the instance and with the consent of the father. Upon demurrer the suit was dismissed, and, the case being properly brought to this court, error is assigned upon this action of the trial judge.

"We think there was no error in this dismissal. At common law the right of the father to the control and custody of his infant child grew out of the corresponding duty on his part to maintain, protect, and educate it. These rights could only be forfeited by gross misconduct on his part. The right to control involved the subordinate right to restrain and inflict moderate chastisement upon the child. In case parental power was abused, the child had no civil remedy against the father for the personal injuries inflicted. Whatever redress was afforded in such case was to be found in an appeal to the criminal law and in the remedy furnished by the writ of *habeas corpus*. So far as we can discover, this rule of the common law has never been questioned in any of the courts of this country, and certainly no such action as the present has been maintained in these courts. It is true that no less celebrated an authority than Judge Cooley, in the second edition of his work on Torts, at page 171, observes that 'in principle there seems to be no reason it should not be sustained.' No case, however, is cited in support of this text. In fact, the only case which the diligence of counsel has been able to find in which this particular question has been discussed is that of *Hewlett v. George, Ex'r*, reported in 68 Miss. 703, 9 South. 885, 13 L. R. A. 682. It is there said: 'So-long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid and comfort and obey, no such action as this can be maintained. The peace of society, and of the families composing society, and of a sound public policy designed to subserve the repose of families and the best interests of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent. The state, through its criminal

laws, will give the minor children protection from parental violence and wrongdoing, and this is all the child can be heard to demand.'

"The fact that the cruel treatment in this case was inflicted by a step-mother can make no difference, for, whether inflicted in the presence of the father or not, if the action could be maintained at all, he would be responsible for the tort. If inflicted in his presence, he alone would be responsible, nothing appearing to repel the presumption that it was the result of his coercion; if out of his presence, then he and she would be jointly liable for the wrong. So at last it comes back to the question as to the right of a minor child to institute a civil action against the father for wrongs inflicted upon it.

"We think that the circuit judge acted in obedience to a well-settled rule controlling the relation of father and child, and in furtherance of a sound public policy, in sustaining the demurrer to the declaration in this case, and his judgment is affirmed."